

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

1	UNITED STATES SECURITIES AND	)	Docket No. 18 C 5587
2	EXCHANGE COMMISSION,	)	
3		)	
4	Plaintiff,	)	
5		)	
6	v.	)	Chicago, Illinois
7		)	August 28, 2018
8	EQUITYBUILD, INC., et al.,	)	9:30 o'clock a.m.
9		)	
10	Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

11	For the Plaintiff:	U.S. SECURITIES AND EXCHANGE
12		COMMISSION, by
13		MR. BENJAMIN J. HANAUER
14		175 West Jackson Boulevard
15		Suite 900
16		Chicago, Illinois 60604
17	For the Defendants:	LAW OFFICES OF MARK L.
18		ROSENBERG, by
19		MR. MARK LOUIS ROSENBERG
20		7101 Wisconsin Avenue
21		Suite 1201
22		Bethesda, Maryland 20814
23		(appearing telephonically)
24	For the Receiver:	RACHLIS DUFF ADLER PEEL &
25		KAPLAN, LLC, by
		MR. MICHAEL RACHLIS
		542 South Dearborn Street
		Suite 900
		Chicago, Illinois 60605

ALEXANDRA ROTH, CSR, RPR  
Official Court Reporter  
219 South Dearborn Street  
Room 1224  
Chicago, Illinois 60604  
(312) 408-5038

1 (Proceedings had in open court:)

2 THE CLERK: Case 18 CV 5587, United States Securities  
3 and Exchange Commission versus Equitybuild.

4 MR. HANAUER: Good morning. Ben Hanauer for the SEC.

5 MR. RACHLIS: Good morning, your Honor. Michael  
6 Rachlis and Kevin Duff. We are here on behalf of the receiver,  
7 Kevin Duff, Receiver.

8 MR. DUFF: Good morning, your Honor.

9 MR. ROSENBERG: Good morning, your Honor. Mark L.  
10 Rosenberg for the defendants.

11 THE COURT: All right. So there are a number of  
12 motions. Let's deal with them as they were filed.

13 So first of all, there is the application by the  
14 Braganca LLC for allowance of compensation, reimbursement of  
15 expenses, as they served as counsel for all defendants, and  
16 compensation expenses for counsel for the individual  
17 defendants, asking that their fees and expenses up to this date  
18 be permitted to be paid out of the receivership estate.

19 What's the SEC's position with regard to this motion?

20 MR. HANAUER: Procedurally, your Honor, it's my  
21 understanding that motion isn't noticed up until tomorrow. The  
22 SEC does object and will be filing an opposition brief this  
23 morning.

24 THE COURT: Okay.

25 MR. HANAUER: And it's also my understanding, Ms.

1 Braganca will not be appearing in court until tomorrow to  
2 present that motion.

3 MR. ROSENBERG: Yes, that's correct, your Honor.  
4 Ms. Braganca had a conflict with another case this morning, was  
5 unable to appear in court this morning. But she will be there  
6 tomorrow morning.

7 MR. RACHLIS: Your Honor, on behalf of the receiver,  
8 we also want to note for the record, while we are not going to  
9 be filing anything, we are opposing the motion as well.

10 THE COURT: Okay. I will deal with that tomorrow.

11 The next motion is agreed motion for Court approval of  
12 forensic collection protocol. So I just want to make sure how  
13 this is going to work. So the SEC will be retaining -- or will  
14 be paying for its outside forensic consultant to perform the  
15 services, is that correct?

16 MR. HANAUER: I didn't -- I'm sorry, your Honor?

17 THE COURT: The SEC --

18 MR. HANAUER: To perform the services?

19 THE COURT: Right. So --

20 MR. HANAUER: Yes, your Honor.

21 THE COURT: The SEC will be paying for it.

22 MR. HANAUER: Yes, as opposed to the receivership and  
23 the investors. This is an agreed motion, your Honor.

24 THE COURT: Right. I just wanted to make sure that  
25 that's how it's going to take place.

1 All right. So the parties' agreed motion for Court  
2 approval of forensic collection protocol is granted.

3 So then lastly, we have the SEC's motion for entry of  
4 judgment by consent of permanent injunctions and other relief.  
5 I have reviewed the motion as well as the proposed orders that  
6 were submitted. Is there any further comment from the parties  
7 today with regard to this motion?

8 Mr. Rosenberg, anything?

9 MR. ROSENBERG: Yes, just one matter, your Honor, that  
10 I wanted to just raise with you, which is that since the entry  
11 of -- since signing of the consent by my two clients, they have  
12 been cooperating with the receiver and the SEC. We have  
13 engaged in a number of discussions with the receiver.

14 But there is an issue that's emerged that I just want  
15 to bring to your Honor's attention, and that is that the -- as  
16 your Honor knows, the -- one of the individual defendants, Sean  
17 Cohen, is overseas with his family and has been attempting to  
18 secure tickets to come back for himself, his wife and three  
19 children. And we were working with the receiver to try to work  
20 it out.

21 And yesterday it appeared that Mr. Cohen had  
22 sufficient points on his Amex account to be able to pay for  
23 those tickets. And the receiver and the SEC had consented to  
24 that during the day yesterday, which I appreciated. However,  
25 it turned out that because there is a past-due payment on the

1 Amex account, Amex will not allow Mr. Cohen to use those  
2 points.

3 And, therefore, we are in a situation in which we  
4 cannot -- he cannot come back with his family. His three young  
5 children are starting school next week. And he is not going to  
6 be able to come back except for, you know, an allowance for  
7 those tickets from, you know, his personal assets. Again, not  
8 from the company's assets.

9 So I have -- I notified the receiver and the SEC last  
10 night that that was the case and asked their consent on that  
11 point. And the reason why that's important is, obviously the  
12 tickets are expensive at the end of the summer. We're talking  
13 about allowance we think of about 6,000, perhaps \$7,000, for  
14 five people to come back from Turkey.

15 And obviously we like to work it out with the receiver  
16 and the SEC. But at this point we don't have an agreement on  
17 that point. We have not filed a motion on that because again  
18 we thought until yesterday we'd use the AmEx points. But now  
19 we are in that situation, and it's kind of an emergency  
20 situation where we need to -- we need to move forward.

21 THE COURT: I think you can try to work it out with  
22 the receiver and the SEC. So it seems like that's an issue  
23 that can be worked out. And so do what you can. If you need  
24 to file a motion, you can file it if it can't be worked out.

25 Okay, Mr. Rosenberg?

1           MR. ROSENBERG: Yes, that's fine, appreciate that,  
2 your Honor.

3           THE COURT: All right. So given that, the SEC's  
4 motion for entry of judgment by consent of permanent injunction  
5 and other relief is granted.

6           Now, Mr. Hanauer, how do you suggest we go about  
7 addressing the remaining issues of the appropriate  
8 disgorgement, pre-judgment interest, civil penalties, et  
9 cetera, et cetera?

10          MR. HANAUER: Thank you, your Honor. Discussed this  
11 with Mr. Rosenberg. And the plan that we have laid out right  
12 now is for the SEC and the Cohens to go pencils down for a  
13 little while. Let the receiver do the work he needs to. And  
14 it's my understanding there is a lot of work to be done, your  
15 Honor.

16          And then after this period -- you know, some period of  
17 allowing the receiver to do the things that he needs to do and  
18 allow the parties to have a better lay of the land, then the  
19 SEC and the Cohens can discuss the issue of financial remedies.  
20 It will be a narrow issue. Whatever discovery would be needed  
21 on that point would simply be for the most part how much money  
22 did the defendants take in.

23          Probably that can just be resolved, you know, paper --  
24 paper discovery. And then the way it's typically done, to the  
25 extent the parties can't reach an agreement on a number, we

1 just brief it to the Court. And it's resolved on the papers.

2 But again, that would be a later date after the  
3 receiver's work has been allowed to run its course.

4 THE COURT: So, how much time do you think you need to  
5 complete that work?

6 MR. DUFF: Well, your Honor, in terms of getting our  
7 arms around the overall accounting picture, I think that's  
8 going to take, you know, a couple months probably. We have tax  
9 filings due. I know there is a motion that's pending with  
10 respect to that. They are due September 15. That's going to  
11 be an awful lot of work.

12 With respect had the preservation, the assets, and  
13 getting our arms around the operation of the -- of the company  
14 and the operation of the properties, that's going to be an  
15 ongoing situation until we resolve how to address those  
16 properties. So that is certainly months and perhaps longer,  
17 depending on the path we take.

18 THE COURT: With regard to the -- so it seems like the  
19 best thing to do, at least from the SEC's standpoint, what you  
20 are proposing is, I set a status date at some point, perhaps in  
21 about 60 days, to figure out where we are with the receiver's  
22 investigation, and see if the issues have been sufficiently  
23 narrowed with regard to the remaining issues, so we can set  
24 some sort of schedule going forward.

25 MR. HANAUER: That sounds great, your Honor.

1 THE COURT: Mr. Rosenberg?

2 MR. ROSENBERG: Yes, that sounds fine, your Honor.

3 The receiver and the SEC is certainly correct. It will take a  
4 few months because these are real estate assets. There is a  
5 lot of complexity in that. And as the individual defendants  
6 have indicated, they are glad to work with the receiver to help  
7 in any way they can to maximize the value of the real estate  
8 assets.

9 THE COURT: All right. So we will set this case for  
10 further status the week of November 5. Carmen, give me a date,  
11 please.

12 THE CLERK: November 7 at 9:00 o'clock.

13 THE COURT: At that point, I will set a schedule going  
14 forward.

15 MR. HANAUER: Thank you, your Honor.

16 And given the parties' agreement to go pencils down  
17 initially and the -- the lack of need for merits-based  
18 discovery, we would ask that the mandatory initial discovery  
19 requirements be held in abeyance until the November 7 status.

20 THE COURT: That's reasonable. I will go ahead and  
21 stay any obligation in the mandatory initial discovery project.

22 All right. Thank you. Yes.

23 MR. RACHLIS: There is one other motion, your Honor.

24 That is the -- for the approval of the rates to be charged by  
25 the receiver's accountants and to appoint a tax administrator.



1 That has also been agreed to by the SEC and counsel for the  
2 Cohens.

3 THE COURT: That I don't have in my packet. Hold on.

4 MR. RACHLIS: It is Docket No. 32, your Honor.

5 (Brief pause.)

6 THE COURT: To the extent the accounting firms are  
7 going to be engaging outside vendors, what type of outside  
8 vendors would they require?

9 MR. DUFF: Your Honor, I don't know specifically,  
10 except that they know that they cannot do it without my express  
11 approval. And obviously we have an eye towards being extremely  
12 cost conscious here.

13 THE COURT: Okay. As long as they are hiring outside  
14 vendors subject to the receiver's approval, the motion looks  
15 fine. I will go and grant it, and I will enter the order.

16 MR. RACHLIS: Thank you, your Honor.

17 THE COURT: I guess we will see you tomorrow.

18 MR. HANAUER: Thank you, your Honor.

19 MR. ROSENBERG: Thank you, your Honor.

20 (Which were all the proceedings heard in this case.)  
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## CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct  
and complete transcript of the proceedings had at the hearing  
of the aforementioned cause on the day and date hereof.

/s/Alexandra Roth

10/8/2018

\_\_\_\_\_  
Official Court Reporter  
U.S. District Court  
Northern District of Illinois  
Eastern Division

\_\_\_\_\_  
Date